

1 Tiffany L. Lee (Bar No. 303007)
tiffanylee@perkinscoie.com
2 PERKINS COIE LLP
1201 Third Avenue, Suite 4900
3 Seattle, WA 98101
Telephone: (206) 359-3304
4 Facsimile: (206) 359-4404

5 *Attorney for Non-Party*
6 *Nintendo of America Inc.*

7
8 UNITED STATES DISTRICT COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SAN FRANCISCO DIVISION
11

12 **IN RE GOOGLE PLAY STORE**
13 **ANTITRUST LITIGATION**

14 THIS DOCUMENT RELATES TO:

15 *Epic Games Inc. v. Google LLC et al.*, Case
16 No. 3:20-cv-05671-JD

MDL No. 3:21-md-02981-JD

**DECLARATION OF KRISTOPHER KIEL
IN SUPPORT OF NON-PARTY
NINTENDO OF AMERICA INC.'S
MOTION TO SEAL PORTIONS OF TRIAL
EXHIBIT 1524**

17 I, Kristopher Kiel, declare as follows:

18 1. I am currently Senior Corporate Counsel in the Legal Department at Nintendo of
19 America Inc. ("NOA"). I have worked at NOA since 2014. NOA is one of many subsidiaries of
20 Nintendo Co., Ltd. ("NCL"), a corporation based in Japan. Although NCL and each of its
21 subsidiaries (including NOA) are separate companies, for purposes of this declaration I will refer
22 to NCL and its subsidiaries together as "Nintendo." The facts stated in this declaration are based
23 on my own personal knowledge and, if called as a witness, I could testify to those facts.

24 2. In my current role at NOA, I am responsible for managing various legal matters
25 including litigation matters. In my role I am aware of various agreements that Nintendo has with
26 third parties and confidential financial and business information associated with those agreements
27 and other business arrangements. Based on my work experience, I am familiar with Nintendo's
28 business and strategies. Nintendo keeps business strategy information confidential to protect

1 itself from competitive harm. A significant part of my role entails being aware of and protecting
2 the confidentiality of that information.

3 3. I understand that Exhibit 1524 in *In re Google Play Store Antitrust Litigation*, No.
4 3:21-md-02981-JD (N.D. Cal) and *Epic Games, Inc. v. Google LLC et al.*, No. 3:20-cv-05671-JD
5 (N.D. Cal.) is to be used during trial on Wednesday, November 8, 2023. Exhibit 1524 contains
6 Nintendo's confidential information that was previously produced by Google and designated
7 "Highly Confidential - Outside Counsel Eyes Only" pursuant to the operative protective orders
8 (see, e.g., Case No. 3:21-md-02981-JD, ECF 248).

9 4. I make this declaration on behalf of Nintendo in support of Nintendo of America's
10 Motion to Seal Portions of Trial Exhibit 1524.

11 5. I have reviewed certain portions of Exhibit 1524 provided to Nintendo by counsel
12 for Google. The portions of Exhibit 1524 I reviewed are non-public information relating to
13 Nintendo that is sensitive and highly confidential. The information would potentially cause
14 substantial competitive harm to Nintendo if disclosed to the public.

15 6. Several portions of the documents I reviewed relate to competitively sensitive
16 information about Nintendo's contracts and business relationship with Google. Page 28, Page 35,
17 and Page 37 in Exhibit 1524 include financial and term information relating to a confidential deal
18 between Nintendo and Google. Page 27 in Exhibit 1524 contains a chart with a row that refers to
19 "Nintendo" and describes information about a non-public contractual arrangement between
20 Nintendo and Google.

21 7. Nintendo treats its contracts and the specific provisions within them as highly
22 confidential. Nintendo's agreements with Google reflect sensitive information about Nintendo's
23 business strategies, including strategies for negotiation with partners and developing content and
24 partnering with content platform operators such as Google. The provisions and details about their
25 arrangement, terms, and negotiation are not available to the public. Disclosure of that
26 information could lead to substantial competitive harm to Nintendo because competitors could
27 use the provisions in Nintendo's contracts with Google to Nintendo's detriment. Competitors
28 seeking to make inroads with Google could copy the contractual provisions that Nintendo

1 negotiated with Google. For example, competitors could attempt to structure their deals to match
2 the financial and term provisions of Nintendo's contract with Google. That would obviate any
3 competitive advantage Nintendo obtained through its negotiations with Google. More broadly,
4 competitors could adopt Nintendo's general approach to working with content platform operators
5 and, by doing so, gain ground on Nintendo in competing to develop and distribute content.

6 8. Several of the document portions I reviewed comprise highly confidential financial
7 information. Page 27 and Page 41 in Exhibit 1524 each contain a chart referring to "Nintendo."
8 The charts describe confidential financial details reflecting terms and performance of the business
9 relationship between Nintendo and Google.

10 9. The growth, revenue, spend, and other performance information described in these
11 documents is highly confidential and competitively sensitive information. This type of financial
12 and marketing information is non-public. Nintendo keeps this information secret and
13 confidential. Publicly disclosing growth, revenue, and/or spend information relating to Nintendo
14 and its business dealings with Google would result in competitive harm to Nintendo.
15 Competitors could leverage that information to gain a more thorough understanding of
16 Nintendo's business and marketing strategies and priorities relating to content development for
17 Google and in general. Competitors could use that information against Nintendo by taking steps
18 to counteract Nintendo's business strategies and priorities, such as Nintendo's approach to
19 content development. The highly confidential financial and marketing information would provide
20 competitors with an advantage they would not have if the information remained non-public.

21 10. Some of the material I reviewed relates to Nintendo's relationship with Google or
22 other business partners. Page 27 in Exhibit 1524 reflects how Nintendo and Google view each
23 other as partners and their respective market positions.

24 11. This non-public and highly confidential information relating to the relationship
25 between Nintendo and its business partners is competitively sensitive. Nintendo has developed a
26 relationship with its business partners over many years. If non-public and confidential
27 information about the Nintendo's relationship with its business partners were disclosed publicly, a
28 competitor could use that information to Nintendo's detriment by copying Nintendo's strategy for

dealing with its business partners, including Nintendo's approach to interacting and negotiating with business partners and the unique combination of contractual arrangements entered into by the two companies. That could lead to Nintendo receiving less attention from business partners while other competing content developers receive more, which would result in competitive harm to Nintendo. Thus, revealing details about the Nintendo's relationship other business partners could potentially undermine Nintendo's competitiveness.

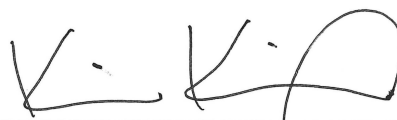
12. The chart below summarizes my review of material from Exhibit 1524.

Exhibit Number	Document Description	Portion Sought to Be Sealed	Reason(s) for Sealing Request
Exhibit 1524	Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension	Excerpts referencing confidential Nintendo information on Page 27	Describes information about a contractual arrangement between Nintendo and Google, including confidential financial details reflecting terms and performance of the business relationship between Nintendo and Google, and reflecting how Nintendo and Google view each other as partners and their respective market positions. All of this information is subject to contractual confidentiality protections.
Exhibit 1524	Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension	Excerpts referencing confidential Nintendo information on Page 28	Contains competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information relating to a deal between Nintendo and Google, all of which is subject to contractual confidentiality protections.
Exhibit 1524	Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension	Excerpts referencing confidential Nintendo information on Page 35	Contains competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information relating to a deal between Nintendo and Google, all of which is subject to contractual confidentiality protections.

Exhibit Number	Document Description	Portion Sought to Be Sealed	Reason(s) for Sealing Request
Exhibit 1524	Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension	Excerpts referencing confidential Nintendo information on Page 37	Contains competitively sensitive information about Nintendo's contracts and business relationship with Google, including financial and term information relating to a deal between Nintendo and Google, all of which is subject to contractual confidentiality protections.
Exhibit 1524	Games Velocity Program: Review of the program approved in April 2019 2 proposals for program extension	Excerpts referencing confidential Nintendo information on Page 41	Contains highly confidential financial information, including confidential financial details reflecting terms and performance of the business relationship between Nintendo and Google, all of which is subject to contractual confidentiality protections.

I declare under the penalty of perjury of the laws of the United States of America that the foregoing is true and correct.

Executed this 7th day of November 2023 in Sammamish, Washington.



Kristopher Kiel